

OFFICE OF THE ATTORNEY GENERAL 91-00215



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Honorable Lawrence M. Wettermark
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P.O. Box 1443
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Counties -- Competitive Bid Law
-- Sales and Use Tax --
Construction -- Exemptions

The Mobile County Commission, as a governmental entity, is exempt from the payment of sales or use tax on purchases made by it.

If the Mobile County Commission, in dealing with a contractor who has been awarded a contract under the competitive bid law to construct a parking facility and governmental offices, appoints the contractor as its agent and if the purchases of tangible personal property are made in the name of the County Commission, with the credit of the County Commission being obligated, and the purchases are paid for with funds belonging to the County Commission, the purchases would be exempt from sales or use tax.

Dear Mr. Wettermark:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION PRESENTED

Under the circumstances presented in your request, whereby county construction projects will be competitively bid in compliance with the Alabama bid law, with the bidders being informed that the successful contractor will be designated as an agent of Mobile County to purchase materials on county authorized purchase orders, with the vendors directly invoicing Mobile County, with the credit of Mobile County being obligated, and the invoices being paid directly by Mobile County, would such purchases by Mobile County be exempt from sales and use tax and would the procedure outlined be in compliance with the Alabama bid law?

FACTS AND ANALYSIS

Two building projects are to be undertaken by Mobile County. The County intends to construct a multi-level parking facility and a governmental complex to house the offices of both the City of Mobile and Mobile County. Mobile County intends to advertise the projects for bid in compliance with the Alabama bid laws. The bid specifications will inform all bidders that the successful contractor will be designated as an agent of Mobile County to purchase materials on county authorized purchase orders. The vendors will directly invoice Mobile County and the credit of Mobile County will be obligated and all invoices will be paid directly by Mobile County.

Alabama Department of Revenue Sales and Use Tax Rule 810-6-3-.69.02 addresses the tax-exempt status of governmental entities. The Rule states as follows:

The State of Alabama and counties and cities of the state have a specific exemption from the payment of sales and use tax on any of the property they purchase or use. Note, however, that a sale to the state or to a county or city of the state is a transaction where the property is sold as a result of an order issued by an official of one of these bodies having authority to make such purchases and acting in his official capacity and, by issuing the order, obligates the agency of which he is an official for the payment of the purchase price.

In an Attorney General's opinion addressed to Honorable R. G. Britton, Commissioner, Board of Corrections, dated

April 22, 1981, AG Opinion No. 81-00342, the procedures outlined in your request have been established which enable a governmental entity to appoint a contractor as its agent in order to take advantage of its tax-exempt status.

CONCLUSION


Based upon the facts as presented and previous opinions of the Attorney General, it is my opinion that the requirements of a competitive bid law have been satisfied. Compliance with the procedures as outlined will enable the County Commission, through its designated agent, to purchase tax-free tangible personal property for use in the building projects.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS
Attorney General

By


JAMES R. SOLOMON, JR.
Chief, Opinions Division

JE:JWH:pj28